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SUPREME COURT, U.S.

No. 47

IN THE
Supreme Court of the United States

October Term, 1954

IN THE MATTER
of the
Application of Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service,

Respondent,

for process to enforce subpoena as to
SALVATORE FALCONE,

Petitioner.

IN THE MATTER
of the
Application of Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service,

Respondent,

for process to enforce subpoena as to
JOSEPH FALCONE,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals
For the Second Circuit.

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INDEX.

	PAGE
Opinions Below	2
Jurisdiction	2
Questions for Review	3
Statute Involved	4
Statement of the Cases	4
Reasons for Granting the Writ	8
Conclusion	12
Appendix:	
A. Opinion Below	13
B. Conflicting Opinion—Re: Minker (C. C. A. 3rd)	32
C. Opinion—District Court—N. D. N. Y. Re: Falcone	40
D. Opinion—District Court—S. D. N. Y. Re: Oddo	52
E. Judgment 1—Re: Salvatore Falcone	56
2—Re: Joseph Falcone	58
F. Statutes Involved	60
G. Congressional Intent of Statute—House Report No. 1365	70
H. Order Denying Rehearing	73

CITATIONS:

Re Barnes (Falcone), D. C. N. D. N. Y., 116 F. Supp. 464 2
Re Oddo, D. C. S. D. N. Y., 117 F. Supp. 323 2
U. S. vs. Abraham Mishkin (C. C. A. 3rd) unreported, Appendix B 8, 10, 11
Brelumsky vs. Tod, 263 U. S. 149 11
Harriman vs. I. C. C., 211 U. S. 407 11
Oklahoma Press Pub. Co. vs. Walling, 327 U. S. 186 11
National Labor Board vs. Anchor Rome Mill, 197 F. (2d) 447 11
Osborn vs. Bank of U. S., 22 U. S. (9 Wheat) 738 11
Boyd vs. Thayer, 143 U. S. 135 11
Lauria vs. U. S., 231 F. S. 91 11

STATUTES

28 U. S. C. Section 1254 (1) 3
66 Statute 163, 198, 199 (McCarran-Walter Act of 1952) 4
Section 235 (a) Immigration and Nationality Act of 1952 (McCarran-Walter Act) (8 U. S. C. Section 1225) 3, 4, 5, 6, 7, 9, 10, 60-62
Section 340 Immigration and Nationality Act 1952 (8 U. S. C. Section 1451) 3, 4, 6, 7, 9, 10, 64-65
Section 335 (a) and (b) Immigration and Nationality Act 1952 (8 U. S. C. Section 1446) 4, 62-64

CODE OF FEDERAL REGULATIONS

Title 8 Section 287.4 ..... 4, 6, 65-67
Title 8 Section 335.11 ..... 4, 6, 67-69
Title 8 Section 340.11 ..... 4, 6, 69

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To the United States Court of Appeals
For the Second Circuit.

To the Honorable Chief and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgments of the Court of Appeals for the Second Circuit dated and entered January 10, 1955, reversing, with directions, the judgments of the United States District Court for the Northern District of New York, entered on December 3, 1953.

Opinions Below

The opinion of the District Court filed on November 20, 1953 is reported in 116 F. Supp. 464 and appears in the certified copy of record filed herein (R. pp. 38-48) and in Appendix C. hereto (pp. 40-51). The opinion of the Court of Appeals for the Second Circuit filed on January 10, 1955 is not yet reported and appears in the certified copy of the record filed herein (R. pp. 59-75) and in Appendix A. (p. 13-31). The opinion of the District Court for the Southern District of New York in the case argued simultaneously herewith and entitled *U. S. vs. Oddo* is reported in 117 F. Supp. 323 and appears in Appendix D. hereto (pp. 52-55).

Grounds On Which Jurisdiction Is Invoked

Review is sought of judgments of U. S. Court of Appeals, Second Circuit, dated January 10, 1955 and entered January 10, 1955.

An order denying a rehearing by the U. S. Court of Appeals, Second Circuit, is dated February 8, 1955 (C. R. p. 92).

No order granting an extension of time within which to petition for certiorari was made.

The statutory provisions believed to confer on this Court jurisdiction to review the judgments in question by writ of certiorari is United States Code, Title 28, Section 1254 (1).

Questions Presented For Review

The fundamental questions presented by this petition are, viz:

1. Whether the power granted by Section 235 (a) of the Immigration and Nationality Act of 1952 (8 U. S. C. Section 1225) (McCarran-Walter Act), to an immigration officer "*to require by subpena the attendance and testimony of witnesses before immigration officers and special inquiry officers and the production of books, papers and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act* * * *" has application to an investigation, the object of which is to discover evidence for use in an Equity proceeding not yet instituted pursuant to Section 340 of said Act (8 U. S. C. Section 1451), to effect the revocation and cancellation of the naturalization certificates of the petitioners herein, who are residents of the United States. (Italics supplied).

2. Whether by the exercise of said subpoena power contained in Section 235 (a) of the Act aforesaid, the petitioners herein can be compelled to give evidence against themselves which could be used against them in a subsequent proceeding instituted, pursuant to provisions of

Section 340 of the Act (8 U. S. C. Section 1451), to effect the revocation and cancellation of their naturalization certificates;

3. Whether the power to issue a subpoena granted by Section 235 (a) of Title II of the Act, entitled "Immigration", Chapter 4 subtitled "Provisions Relating to Entry and Exclusion", can be exercised in an exploratory investigation into matters which would or could ultimately lead to a judicial proceeding to denaturalize a citizen, which proceeding is provided for by Section 340 of Title III of the Act, entitled "Nationality and Naturalization".

4. Whether the word "witness" as used in Section 235 (a) of the Act, without any qualification whatsoever, can be construed to mean or include a "party" so as to subject such party to the subpoena power set forth in said Section 235 (a) of the Act.

Statute Involved

The statutory provisions involved are Sections 235 (a), 287 (b), 340, 335 (a) and (b) of the Immigration and Nationality Act of 1952; 66 Statute 163, 198, 1; (McCarran-Walter Act); 8 U. S. C. Sections 1225, 1357 (b); 1451, 1446; and Code of Federal Regulations Title 8 Sections 287.4, 335.11 and 340.11. They are printed in Appendix F. herein (pp. 60-69).

Statement

Petitioners are brothers and are duly naturalized citizens of the United States. Joseph Falcone assumed such status by an order of the Supreme Court of the State of New York, Oneida County, on February 18, 1925 and Sal-

vatore Falcone was duly admitted to citizenship by an order of the same Court dated July 21, 1925. (R. p. 55 [164]).

Petitioners emigrated to the United States on December 8, 1907, accompanied by their parents, now deceased, and at the time of entry, Joseph Falcone was 4 years old and Salvatore Falcone was 16 years old. (R. p. 55 [164]).

Prior to the issuance of the subpoenas here in question, the Immigration Service by letter addressed to Salvatore Falcone who resides in Miami, Florida, and the other addressed to Joseph Falcone who resides in Utica, New York, requested each of them to appear for an interview. Petitioners appeared at the designated time and place. That Salvatore Falcone voluntarily answered all questions, but Joseph Falcone did not answer any questions as the hearing officer refused to divulge the reason for the interview. (R. p. 13 [39]).

Subsequently, petitioners were served with subpoenas issued by the Immigration Director at Syracuse, New York, commanding petitioners to appear at Syracuse, New York to give testimony, make a statement, produce records of original entry, birth and naturalization certificates, without giving any reason or purpose therefor, or setting forth in what proceeding such testimony was required. (R. p. 9).

Petitioners appeared specially and objected to the power of the Immigration Director to issue said subpoenas against them pursuant to Section 235 (a) of the Immigration and Nationality Act of 1952 (8 U. S. C. Section 1225), on the ground that such power was granted to him only in cases involving aliens and not duly naturalized citizens of the United States. Nevertheless, they voluntarily ex-

hibited their birth and naturalization certificates. (R. p. 6 [17-18]) (R. pp. 30-35).

Thereafter, petitioners were served with orders to show cause returnable at the Federal District Court at Albany, New York, why they should not be held for contempt, and they appeared specially, objected that the subpoenas issued under Section 235 (a) of the 1952 Act were invalid as against the petitioners as naturalized citizens, and subpoenaed into Court the original naturalization records from the Oneida County Court House, Utica, New York, which records disclosed the original entry or certificates of arrival (as demanded in the subpoenas), together with all other documentary evidence, including the orders signed by a Justice of the Supreme Court of the State of New York duly admitting the petitioners to citizenship. (R. p. 40 [119]) (R. p. 55 [164]).

That the basis of the jurisdiction of the District Court is found in said Section 235 (a) of the Act.

The Immigration Service contended that Section 235 (a) confers upon it power to issue subpoenas against any person including naturalized citizens and that such power is implicitly authorized and granted by the terms of Section 287 (b)—(8 U. S. C. Section 1357 (b) of the Act of 1952), and that it is also authorized by the Code of Federal Regulations, Title 8, promulgated by the Attorney General, Sections 287.4, 335.11 and 340.11, and also that the Service needs said testimony to decide the possibility of an action in Equity against petitioners for a decree of denaturalization under Section 340 of the 1952 Act. (8 U. S. C. Section 1451).

The District Court rendered its decision in writing dismissing the application of the Immigration Service (R. pp. 38-31), Appendix C (pp. 40-51), stating in substance that an analysis of the Congressional intent as to Section 235 as expressed in House Report No. 1365, United States Code Service, 1952, pages 1709, 1710, Appendix G., and a reading of the entire Section 235 indicate that if was not intended by Congress to confer jurisdiction on the Service to issue subpoenas to naturalized citizens of the United States; also that a citizen is entitled to have his status determined by a judicial tribunal and have the security of judicial over administrative action; and that to allow the subpoena to stand, the provisions of Section 340 of the Act (8 U. S. C., Section 1451), which prescribes the judicial procedure for revocation, would be empty words, and the judicial procedure would be pre-empted by administrative action.

That appeals were taken from the District Court judgments to the Court of Appeals, Second Circuit. That on January 10, 1955, Circuit Judge Medina delivering the opinion of the court below, reversed the District Court and construed Section 235 (a) of the Act of 1952 by giving it a broad, general and extensive interpretation and the reason, as it is believed, was the court's concern that in so construing the same, it would increase the investigatory powers of the Immigration officers so that they could ferret out communists and would place the government in a position to deal more effectively with subversives.

The Court below then continued:

"This does not mean that the Falcones and Oddo are charged with or even suspected of subversion. Nothing in these records now before us indicate that

any of these respondents has ever been engaged in or had any knowledge of subversive activities of any kind. * * * (C. R. pp. 59-75) Appendix A. (p. 30). (Italics supplied).

It is interesting to note that Circuit Judge Medina in delivering the opinion of the court below, which was filed on January 10, 1955, refers therein to the *Minker* case as reported in the District Court for the Eastern District of Pennsylvania, 118 F. Supp. 264, but does not mention the judgment of reversal by the Court of Appeals for the Third Circuit which was filed on December 1, 1954. Appendix B.

REASONS FOR GRANTING THE WRIT

FIRST

That the precise question herein involved has been determined adversely to the petitioners herein by the court below, while the same question was determined in favor of a citizen in *U. S. vs. Abraham Minker*, decided December 1, 1954 by the Court of Appeals for the Third Circuit, as yet not reported and printed in Appendix B. herein (pp. 32-39).

That a conflict, therefore, exists between the decision of the Court of Appeals for the Second Circuit and the decision of the Court of Appeals for the Third Circuit on a question of great public interest and importance that should be resolved by the Supreme Court.

SECOND

Clearly, the question presented is an important question of Federal law not only for the guidance of the Attorney General and the Immigration Service in the administration of the Immigration Law of 1952, but also equally important to the determination of the rights, privileges and immunities of every naturalized American citizen of the United States.

Settlement of this question by this Court is plainly in the public interest since it will arise in almost every investigation initiated by the Immigration Service or the Attorney General by the exertion of the alleged power to subpoena a naturalized American citizen for the purpose of compelling him to give evidence against himself while under oath, prior to the actual commencement of a proceeding in Equity pursuant to Section 340 of the Act of 1952 (8 U. S. C. Section 1451), and to use such evidence to effect a cancellation of his Certificate of Naturalization.

THIRD

That the rights, privileges and immunities conferred upon and possessed by the petitioners herein by virtue of the Certificate of Naturalization granted to them over 29 years ago, and the like rights, privileges and immunities of all other naturalized citizens, are gravely jeopardized by the use of compulsion against the said petitioners through the unauthorized exercise of the subpoena power claimed to have been conferred upon the Attorney General and certain officers of the Immigration Service pursuant to Section 235 (a) of the Immigration and Nationality Act of 1952 (McCarran-Walter Act) (8 U. S. C. Section 1225).

FOURTH

That the decision of the Court of Appeals in the instant case in effect sanctions the substitution of *administrative inquiry* in lieu of *judicial determination* on the question of cancellation and revocation of the naturalization certificates of naturalized resident citizens as provided by Section 340 of the Immigration and Nationality Act of 19 (8 U. S. C. Section 1451) and is of such grave consequence to *all naturalized citizens* as to require a review thereby the Supreme Court.

In the *Minker* case, supra, the said Court of Appeals for the Third Circuit held:

1. That the power granted by Section 235 (a) of the Act of 1952 to any immigration officer to subpoena the attendance and testimony of "witnesses" before immigration officers concerning any matter material or relevant to the enforcement of said Act and the administration of the Service in a proceeding entitled "In re Minker" does not apply to Minker, since he is a party, and not a "witness" in the proceeding. Where Congress wished to make a provision as to a witness applicable to parties in interest, it said so, (citing four instances in the Act to that effect)

2. That Congress has outlined a judicial procedure with the safeguards inherent therein which must be followed to accomplish denaturalization under Section 3 of the Act and any intention on the part of Congress to minimize such safeguards by compelling the citizen to be a witness against himself in an administrative proceeding should not be found by an unnecessarily broad interpretation of the subpoena power conferred by Section 235 (a)

3. The rule of strict construction applicable to criminal statutes should also be applied to the construction of statutes having "punitive impact" such as denaturalization proceedings since loss of citizenship is a far graver penalty than most fines and prison sentences.

FIFTH

The decision of the Court below is believed to be erroneous and the conflicting decision of the Court of Appeals for the Third Circuit in *U. S.* vs. *Minker*, supra, correct.

Moreover, the decision below is in direct conflict with the applicable decisions of this Court, namely, viz: (a). A naturalized citizen is entitled to have his status determined by a judicial tribunal and have the security of judicial over administrative action. (*Bilokumsky* vs. *Tod*, 263 U. S. 149, 152); (b) The subpoena power must remain within the bounds of the legislative grant, and not to overreach the authority granted by Congress, and in investigatory matters should be conferred in expressed and explicit terms for that purpose. (*Harriman* vs. *I. C. C.*, 211 U. S. 407; *Oklahoma Press Pub. Co.* vs. *Walling*, 327 U. S. 186, 201, 217; *National Labor Board* vs. *Anchor Rome Mills*, 197 F. 2(d) 447, 449). (c) Under our Constitution, a naturalized citizen stands on equal footing with a native citizen in all respects, save of the eligibility to the Presidency. (*Osborn* vs. *Bank of U. S.*, 22 U. S. (9 Wheat) 738; *Boyd* vs. *Thayer*, 143 U. S. 135; *Lauria* vs. *U. S.*, 251 U. S. 91).

Thus, the decision of the Court below interpreting an important statute of the United States leaves the law in

a state of uncertainty and the determination of this q
tion by this Court will settle the point of law and res
the uncertainty and make for uniformity of decision.
permit the decision to stand would not only be highly
judicial to every naturalized citizen of the United Sta
but would be contrary to the rights afforded by our C
stitution.

CONCLUSION

**For the foregoing reasons, this petition for a wri
of certiorari should be granted.**

Respectfully submitted,

ANTHONY S. FALCON
Attorney for Petitioners

March 21, 1955.

APPENDIX

Appendix A.

Nos. 20, 21, 76 October Term, 1954

Argued November 5, 1954 Decided January 10, 1955

Docket Nos. 23081, 23082, 23172

Application of Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service, for process to enforce subpoena as to SALVATORE FALCONE.

Application of Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service, for process to enforce subpoena as to JOSEPH FALCONE.

EDWARD J. SHAUGHNESSY, as District Director, Immigration and Naturalization Service, New York District,

Petitioner-Appellant,

-against-

JOHN ODDO,

Respondent-Appellee.

Before, CHASE, MEDINA and HINCKS, Circuit Judges.

Appeals from orders of Judge Foley, United States District Court for the Northern District of New York, and Judge Weinfeld, United States District Court for the

Southern District of New York, holding invalid and unauthorized by law subpoenas, issued by an immigration officer, under Section 235 (a) of the Immigration and Nationality Act of 1952, for the discovery of evidence to support a suit for denaturalization, as provided in Section 340 of the 1952 Act. Reported below, *Matter of Falcone*, 116 F. Supp. 464; *In re Oddo*, 117 F. Supp. 323. Reversed.

Theodore F. Bowes, United States Attorney for the Northern District of New York, Syracuse, New York (Charles J. Miller, Ass't. U. S. Attorney, of Counsel; Herman K. Branse, Acting District Counsel Immigration and Naturalization Service, On the Brief), for applicant-appellant Harold E. Barnes.

Anthony S. Falcone, Utica, New York, for respondents-appellees Salvatore Falcone and Joseph Falcone.

J. Edward Lumbard, United States Attorney for the Southern District of New York, New York City (Harold J. Raby, Assistant United States Attorney and Lester Friedman, Attorney Immigration and Naturalization Service, of Counsel), for petitioner-appellant Edward J. Shaughnessy.

Kaufman & Edelbaum, New York City (Maurice Edelbaum and Seymour Teitelbaum, New York City, of Counsel) for appellee John Oddo.

MEDINA, Circuit Judge:

The sole question raised by these two appeals is whether Section 235 (a) [1] of the Immigration and Nationality Act

[1] "Sec. 235. (a) The inspection, other than the physical and mental examination of aliens (including alien crewmen) seeking admission or readmission to, or the privilege of passing through the United States shall be conducted by immigration officers, except as otherwise provided in regard to special inquiry officers. All aliens arriving at ports of the United States shall be examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe. Immigration officers are hereby authorized and empowered to board and search any vessel, aircraft, railway car, or other conveyance, or vehicle in which they believe aliens are being brought into the United States. The Attorney General and any immigration officer, including special inquiry officers, shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, pass through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and, where such action may be necessary, to make a written record of such evidence. Any person coming into the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain in the United States, whether or not he intends to remain in the United States permanently and, if an alien, whether he intends to become a citizen thereof, and such other items of information as will aid the immigration officer in determining whether he is a national of the United States or an alien and, if the latter, whether he belongs to any of the excluded classes enumerated in Section 212. The Attorney General and any immigration officer, including special inquiry officers, shall have power to require by subpena the attendance and testimony of witnesses before immigration officers and special inquiry of-

of 1952 (the McCarran-Walter Act), 66 Statt. 163, 198-9; 8 U. S. C. A. Sec. 1225 (a), authorizes an officer of the Immigration and Naturalization Service to issue a subpoena requiring a naturalized citizen to testify, in an effort to determine if "good cause" exists for the commencement of proceedings to revoke the order admitting such person to citizenship.[2]

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[1] [CONTINUED]
ficers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and to that end may invoke the aid of any court of the United States. Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer or special inquiry officer may, in the event of neglect or refusal to respond to a subpena issued under this subsection or refusal to testify before an immigration officer or special inquiry officer, issue an order requiring such persons to appear before an immigration officer or special inquiry officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof."

[2] "Sec. 340. (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such

In the cases of Salvatore Falcone and Joseph Falcone, the Officer in Chrage of the Immigration and Naturalization Service in Syracuse, New York, applied, on notice, to the United States District Court for the Northern District of New York for orders directing the Falcones, upon whom subpoenas had been served, and who challenged the authority of the Officer to issue the subpoenas under Section 235 (a), to appear and testify. In the case of John Oddo the subpoena was issued by the District Director of Immigration and Naturalization for the New York District, Judge Dimock in the Southern District of New York made an ex parte order directing Oddo to appear and testify, and Oddo moved to vacate Judge Dimock's order. In each case it appeared that testimony was sought to relative to the possibility of instituting an action in equity pursuant to the terms of Section 340 of the Immigration and Nationality Act of 1952, for a decree of denaturalization, the Falcones having been admitted to citizenship in 1925, and Oddo in 1931. Judge Foley refused to direct the Falcones to appear and testify and Judge Weinfeld granted the motion to vacate, each holding that Section 235 (a) authorized the issuance of subpoenas only in cases involving the entry, exclusion and deportation of aliens. The identical proposition was decided contrariwise by

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[8] [CONTINUED]

person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively * * *. If the naturalized citizen does not reside in any judicial district in the United States at the time of bringing such suit, the proceedings may be instituted in the United States District Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence."

Judge Welsh in the District Court for the Eastern District of Pennsylvania, *In re Minker*, 118 F. Supp. 264 (1953).

An "immigration officer" is defined in Section 101 (a) (18) of the 1952 Act as "any employee or class of employees of the Service or of the United States designated by the Attorney General * * * to perform the functions of an immigration officer specified by this Act or any section thereof;" and Section 101 (b) (4) defines a "special inquiry officer" as "an immigration officer who the Attorney General deems specially qualified to conduct specified classes of proceedings * * * required * * * to be conducted by or before a special inquiry officer and who is designated and selected by the Attorney General * * *." The specified classes of proceedings referred to are exclusion proceedings, Section 235 (b), and deportation proceedings, Section 242(b). Without pausing to spell out the details, it will suffice to say that the established method of selecting these immigration and special inquiry officers give assurance that they have had experience in miscellaneous phases of the work of the Immigration and Naturalization Service and possess a special competence and familiarity with the wiles and devices of those seeking in one way or another to defeat the purposes of and to evade the laws governing immigration and naturalization, which are complex and highly technical.

Those who performed analogous functions under the predecessor statute, The Immigration Act of 1917, were described in Section 16 thereof, the Section which as amended became Section 235(a) of the Act of 1952, as "immigrant inspectors." The heading of this old Section

16 reads: "Physical and Mental Examination of Alien Passengers; Regulations; Authorization of Inspectors to Administer Oaths; Appeal to Medical Boards and Personnel Thereof; Subpoena of Witnesses and Documents; Penalty." There were no "Titles" or "Chapters" as in the subsequent 1952 Act.

Section 16 provided that, "[S]aid inspectors (the immigrant inspectors) shall have power to administer oaths and to take and consider evidence touching the right of any alien to enter, reenter, pass through, or reside in the United States * * *" and that, "[A]ny district director of immigration and naturalization designated by the Commissioner or any inspector in charge shall also have power to require by subpoena the attendance and testimony of witnesses before said inspectors and the production of books, papers, and documents touching the right of any alien to enter, reenter, reside in, or pass through the United States, and to that end may invoke the aid of any court of the United States; and any district court within the jurisdiction of which investigations are being conducted by an immigrant inspector may * * * issue an order requiring such person to appear * * * and testify; and any failure to obey such order * * * may be punished * * * as a contempt." There is no dispute about the fact that the provisions just referred to constituted the authority and machinery for administrative investigations by the Service under the 1917 Act, and this authority was widely and continously exercised.

The Revisers' Notes make it plain that the new Section 235(a) of the 1952 Act, pursuant to which the Falcone and Oddo subpoenas were issued, is the successor to the old

Section 16 of the 1917 Act. The amendments are so specific and clear as practically to determine the issue before us. The "immigrant inspectors" are now "any immigration officer, including special inquiry officers," as defined supra, and they are given by Section 235(a) power to administer oaths and to take and consider evidence "of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, pass through or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service * * *." And Section 235(a) proceeds to use identical language in connection with the power of "any immigration officer, including special inquiry officers" to "require by subpoena the attendance and testimony of witnesses * * * relating to the privilige of any person to enter, reenter, pass through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service." As in the old Section 16 the appropriate District Courts are to direct such witnesses to appear and testify and to punish a refusal to testify as a contempt; and Section 287(b) repeats the key phrase above quoted in describing the powers of immigration officers and employees in administering oaths and taking and considering evidence.

Thus certain officers of the Service, designated by the Attorney General, and undisputedly including those who issued the subpoenas in these cases now before us, were explicitly given increased administrative investigatory powers. The counterpart of the phrase appearing in the 1917 Act is strengthened and broadened by the addition of the words "of or from any person," and "or person he

believes or suspects to be an alien;" and there is added, both in the part of the section relating to the administration of oaths and the taking and consideration of evidence and in that relating to the subpoena power and its enforcement by the District Courts, as well as in Section 287(b), the new and comprehensive words "or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service." Surely investigations of an administrative character, conducted by the very officials who by training and experience have expert knowledge of the whole subject of immigration and naturalization, and designed not merely to procure evidence to support a denaturalization proceeding under Section 340 of the Act, but to ascertain the true facts and in many if not most cases, exonerate those under investigation, are "concerning * * matter which is material and relevant to the enforcement" of the Act. True, the language is general, there is no specific reference to denaturalization proceedings; but the very generality of the terms of the statute compels the conclusion that the powers thus conferred may be exercised in reference to the enforcement of Section 340 of the Act, as well as that of all the rest. We are not at liberty to disregard language the import of which is so plain, simply because, in the allocation of "Titles," and "Chapters," and Section headings, the language conferring administrative investigatory powers is included in "Chapter 4 — Provisions Relating to Entry and Exclusion" of "Title II—Immigration," and as part of a long section headed, "Inspection by Immigrant Officers." The historical relationship between the old Section 16 of the 1917 Act and the new Section 235(a), as well as the perfectly experts thoroughly conversant with the long history of

and their iteration, completely rule out the possibility of inadvertence, confusion or ambiguity. And it is worthy of note that the Act of 1952 was not hastily thrown together. On the contrary, it is the result of years of patient study by experts thoroughly conversant with the long history of successive Acts affecting immigration and naturalization and allied matters, and having ripe experience with the practical problems with which the Service has had to grapple.

The rule of construction applicable in such cases is well restated in *Railroad Trainmen* v. *B. & O. R. Co.*, 331 U. S. 519, 528-9 (1947):

> "Where the text is complicated and prolific, headings and titles can do no more than indicate the provisions in a most general manner; to attempt to refer to each specific provision would often be ungainly as well as useless. As a result, matters in the text which deviate from those falling within the general pattern are frequently unreflected in the headings and titles. Factors of this type have led to the wise rule that the title of a statute and the heading of a section cannot limit the plain meaning of the text. *United States* v. *Fisher*, 2 Cranch 358, 386; *Cornell* v. *Coyne*, 192 U. S. 418, 430; *Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348, 354. For interpretative purposes, they are of use only when they shed light on some ambiguous word or phrase. They are but tools available for the resolution of a doubt. But they cannot undo or limit that which the text makes plain."

It is said that a reading of the 1952 Act as an integrated whole demonstrates that Section 235(a) was intended to

be limited to entry, exclusion and deportation. But our reading of the Act in its entirety leaves us with a contrary impression. Moreover, if Section 235(a) is to be applicable only to entry, exclusion and deportation, as held below, what becomes of the words "or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service"? Are these significant words to be left hanging in the air, as it were, and given no effect whatever?

Aside from the argument based upon the heading of Section 235(a) and the inclusion of the administrative subpoena power in Title II of the 1952 Act, relating to Immigration, and that concerning denaturalization proceedings in Title III on Nationality and Naturalization, the principal contentions of respondents stem from the difference in nature between administrative and judicial proceedings and the various provisions of the Act and the Regulations which implement it. Thus it is noted that, pursuant to the terms of Section 340, it is the duty of "the United States district attorneys for the respective districts" to institute "upon affidavit showing good cause therefor," proceedings seeking an order of denaturalization, that such proceedings are judicial in character, that the party thus sued shall have sixty days personal notice in which to answer the petition; and it is said that, if the subpoena power contended for here by the government were sustained, "the judicial procedure for the revocation of naturalization certificates would be pre-empted by administrative action." It seems to be thought that the nature of adversary proceedings of a judicial nature is such that the rights of the United States as petitioner in a denaturalization proceeding, as to discovery and other

procedural matters, should be on a parity with those of the respondent therein, despite the special interest of the government in matters relating to immigration and naturalization and the undoubted power of the Congress to make provision for investigations by government officials preliminary to the commencement of action in court. Moreover, it is said that Section 235(a) and Section 335(b) of the Act are duplicitous, and that this very alleged duplicity gives rise to an inherent ambiguity.

There is no question whatever about the fact that the investigations sought to be pursued by the issuance of these subpoenas are administrative in character and that a denaturalization proceeding is unquestionably judicial. But this presents no inconsistency; nor do we find that Sections 235(a) and 335(b) impinge upon one another in any way. Section 235(a) is purely administrative, as we have already observed. But Section 335(b) relates to proceedings for naturalization, which have since very early times been held to be judicial in character. The subpoena powers given in Section 335(b) are incidental to these judicial proceedings, and this is made clear by the language of the section to the effect that, upon a refusal by any person to obey a subpoena, any employee of the Service designated for the purpose by the Attorney General "may invoke the aid of any court exercising naturalization jurisdiction as specified in section 310 of this title; and any such court may in the event of neglect or refusal to respond," require such person to appear and testify, and, upon further failure of compliance, punish for contempt. Section 310 enumerates the state courts as well as the federal courts in which judicial proceedings for naturalization may be instituted. Thus, the careful integration of the 1952 Act indi-

cates that its several parts are closely articulated into a comprehensive, smoothly functioning whole. After the filing of a petition for naturalization, all examinations and investigations by the officers and employees of the Service designated for that purpose by the Attorney General are conducted pursuant to powers defined and described in Section 335(b). The statute and the subject matter of immigration and naturalization are sui generis; and the exercise of these administrative and judicial investigatory powers side by side and pari passu is, it seems to us, clearly envisioned by the pattern of the statute.

That administrative investigations may be and are often intended to serve as preliminaries to adversary proceedings of a judicial character to which the United States is a party is more or less of a commonplace, where such investigations will serve the public interest. See, e.g., Internal Revenue Code §7602 (1954); Atomic Energy Act, 42 U. S. C. A. §1812(a) (3); Civil Aeronautics Act, 49 U. S. C. A. §§ 642, 644(b), 459, 487; Securities Act, 15 U. S. C. A. §77s (a); Public Utility Holding Company Act, 15 U. S. C. A. § 79(r). As stated by Mr. Justice Jackson, writing for the Supreme Court, in *United States* v. *Morton Salt Co.*, 338 U. S. 632, 642-3 (1950):

> "The only power that is involved here is the power to get information from those who best can give it and who are most interested in not doing so. Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has a power of inquisition, if one chooses to call it that,

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which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not. When investigative and accusatory duties are delegated by statute to an administrative body, it, too, may take steps to inform itself as to whether there is probable violation of the law."

In view of the broad general language of Section 235(a) it does not seem to us surprising that no reference is made in Section 340 to the administrative investigatory powers which the Service now seeks to exercise. Nor do we find anything improperly included in or omitted from the Regulations, now so clearly integrated with the various sections of the Act. There is no point in merely repeating in the Regulations something already apparent on the face of the statute. Naturally, the Regulations affecting "Procedural and Other Non-substantive Provisions" of Section 235(a) relate to the sort of detailed run-of-the-mill practical problems arising from day to day in connection with immigration and inspections.

Moreover, Regulation § 340.11 [8] seems to tie in perfect-

[8] § 340.11 *Investigation and report.* Whenever it appears that any grant of naturalization may have been procured by concealment of a material fact or by wilful misrepresentation, the facts shall be reported to the district director having jurisdiction over the naturalized person's last known place of residence. If the district director is satisfied that a prima facie showing has been made that grounds for revocation exist, he shall cause an investigation to be made and report the facts in writing to the Com-

ly with the interpretation we have given of Section 235(a) as conferring new and broad administrative investigatory powers upon immigration officers delegated by the Attorney General to exercise these powers. Thus "whenever it appears that any grant of naturalization may have been procured by concealment or wilful misrepresentation, the facts shall be reported to the district director having jurisdiction * *." Moreover, where the commission of a crime is indicated — a "violation of section 1425 of Title 18 of the United States Code" — the facts may be presented by the district director "to the appropriate United States Attorney for possible criminal prosecution;" but "[I]f the district director is satisfied that a prima facie showing has been made that grounds for revocation exist, he shall cause an investigation to be made and report the facts in writing to the Commissioner with a recommendation as to whether revocation proceedings should be instituted." The "investigation to be made" must of necessity be administrative in character; and it is noteworthy that additional protection to the naturalized citizen is afforded by the "report" and "recommendation" to the Commissioner, who in turn, but only after he decides, in the exercise of his judgment and discretion in the premises, that a civil action in equity for denaturalization should be brought, will forward the dossier or a summary thereof to the United States "district attorneys," who "upon affidavit showing good

[Continued]

missioner with a recommendation as to whether revocation proceedings should be instituted. If it appears that naturalization was procured in violation of section 1425 of Title 18 of the United States Code, the facts in regard thereto may be presented by the district director to the appropriate United Sttaes Attorney for possible criminal prosecution.

cause" are, according to the provisions of Section 340, to "institute proceedings" in the appropriate state or federal court to effect revocation of the certificate of naturalization. The articulation between the various sections of the Act and the Regulations is compact and in no way ambiguous or repetitious. No effort is wasted on unnecessary commentary; and provision is made for the very sort of administrative orderliness that it is the purpose of the Regulations to serve. Again and again is the administrative investigatory power of the Service recognized, and in the very matter of denaturalization proceedings under Section 340.

Broad policy considerations, plainly to be seen on the face of the Immigration and Naturalization Act of 1952, are equally at variance with the narrow interpretation of Section 235(a) which is reflected in the orders appealed from.

Even as early as 1903 the Congress framed immigration laws which took cognizance of subversives. (Act of March 3, 1903, c. 1012; 32 Stat. 1213). But in recent years infiltration, by the hirelings and conspiratorial agents of Communism, and by the propagandists and enthusiasts of that and other alien ideologies equally repugnant to our free institutions, has become more and more loathsome and menacing. It must not be forgotten that the Subversive Activities Control Act of 1950 (Act of September 23, 1950, c. 1024, Title 1, § 1-32; 64 Stat. 987) amended numerous sections of various immigration and naturalization laws, and most of these amendments have been incorporated into the 1952 Act with which we are now concerned. The findings relative to totalitarian dictatorship and the world

communist movement which are found in Section 2 of the Subversive Activities Control Act of 1950 have a direct bearing on the Congressional intent behind Section 235(a) of the 1952 Act; and one of the findings is especiallly significant. Section 2(14) of the 1950 Act states:

> "One device for infiltration by Communists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society."

Suffice it to say that there is abundant internal evidence in the Act of 1952, and those laws which have been integrated into its warp and woof, to indicate that the Congress in bringing together for the first time in our history all the laws regulating immigration and naturalization, into one extensive compilation, was particularly sensitive to the need for prompt and effective dealing with subversives. Again and again we find a steady strengthening of the investigatory powers of the Service,[4] and, where experience prior to the passage of the Act of 1952 disclosed the need therefor, holes in previously existing laws were plugged and gaps were filled.[5] This was done so that the facts

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[4] E. g., Secs. 105, 235, 287, 335, 8 U. S. C. A. Secs. 1105, 1225, 1357, 1446.

[5] E. g., Sec. 101, 8 U. S. C. A. Sec. 1101, clarified the definition of "entry" which had given the courts considerable difficulty in previous cases. See *Delgadillo v. Carmichael*, 332 U. S. 388 (1947) and *Di Pasquale v. Karnuth*, 158 F. 2d 878 (C. A. 2, 1947); Sec. 318, 8 U. S. C. A. Sec. 1429, eliminated the anomolous situation confronting the court in *U. S. ex rel Walther v. District Director*, 175 F. 2d 693 (C. A. 2, 1949). See *U. S. ex rel Jankowski v. Shaughnessy*, 186 F. 2d 580 (C. A. 2, 1951); Sec. 243 (c), 8 U. S. C. A. Sec. 1253 (c), specifically corrected the prob-

might be promptly ascertained and appropriate and expeditious action taken, not only by way of exclusion or deportation, but in the general administration and enforcement of the Act, applicable to the whole subject of immigration and naturalization as set forth therein.

This does not mean that the Falcones and Okido are charged with or even suspected of subversion. Nothing in these records now before us indicates that any of the respondents has ever been engaged in or had any knowledge of subversive activities of any kind. Nor are they to be criticized for challenging the authority of the immigration officers to issue the subpoenas. They had a perfect right to do that. Furthermore, in so far as concerns the interpretation of Section 235(a), we may assume that they may well be exonerated at the conclusion of the investigations. But the answer to the question before us does not depend upon what may or may not be revealed in a particular case; and it is plain that the exercise of these increased administrative investigatory powers by immigration officers in ferreting out concealments and frauds connected with naturalization proceedings will put the government in a position to deal more effectively with subversives.

Accordingly, we conclude that the increased administrative investigatory powers given by the terms of Section 235(a) of the 1952 Act were intended to relate to the enforcement of the Act as a whole, as stated therein, includ-

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lem confronting the courts under the prior provision in *U. S. v. Prince Line Ltd.*, 189 F. 2d 386 (C. A. 2, 1951); Sec. 274, 8 U. S. C. A. Sec. 1324, cures the omission, from the earlier statute, of penalty provisions for certain of the offenses described therein. The earlier defect was pointed out in *U. S. v. Evans*, 333 U. S. 483 (1948).

ing the ascertainment of such facts as may tend to support a petition for denaturalization. The fact that deportation may follow denaturalization merely emphasizes further the reasonableness of the enlargement of powers of immigration officers which we find in Section 235(a).

We share the solicitude of the two able district judges below, that naturalized citizens be not harassed by subpoenas issued pursuant to legislation of doubtful applicability nor deprived of "the security of judicial over administrative actions" but we think the statute is free from ambiguity. Nor does it seem to us that the denaturalization suit, which may in some cases follow the administrative investigation provided for in Section 235(a), will lack any of the safeguards and protections which are commonly associated with judicial proceedings. Respondents will still have their sixty days to answer the petitions, should they be filed, together with the protection afforded by the Federal Rules of Civil Procedure; and they may still urge any constitutional objections to questions addressed to them by the immigration officers in the course of the investigations.

The orders appealed from are reversed; and the respective District Courts directed to proceed in accordance with this opinion.

Appendix B.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 11,347

UNITED STATES
v.
ABRAHAM MINKER,
Appellant

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Argued October 14, 1954
Before GOODRICH, KALODNER and HASTIE, *Circuit Judges*

OPINION OF THE COURT
(Filed December 1, 1954)

By HASTIE, *Circuit Judge*.

The contempt conviction which we review on this appeal resulted from the refusal of the appellant, Abraham Minker, a naturalized citizen who has resided in this country for more than forty years, to honor a subpoena issued by the District Director of Immigration and Naturalization requiring appellant to appear and testify as a witness in an administrative proceeding entitled "In re Abraham Minker".

From the beginning it has been agreed that this administrative proceeding was the opening inquiry in a course of official action directed toward the denaturalization of

Minker.[1] If probable cause for denaturalization should be found in this administrative proceeding, the appropriate officer of the Immigration and Naturalization Service would then submit his certificate and affidavit of probable cause to a United State Attorney. In normal course, the United States Attorney, armed with that affidavit and such evidence as the immigration authorities had assembled in reaching the administrative decision, would proceed, as authorized by statute, to institute a formal court action against Minker seeking a decree depriving him of citizenship.

The question before us is whether the immigration officer had authority to subpoena Minker to testify in the administrative first stage of official action toward his denaturalization. The government says that Section 235(a) of the Immigration and Nationality Act of 1952[2] give im-

[1] After the issuance of the subpoena, a letter was sent appellant advising him that his attendance was commanded in order that he might give testimony "in connection with and relating to the possible institution of proceedings seeking the revocation of your naturalization in accordance with Section 340 of the Immigration and Nationality Act of 1952."

[2] 66 Stat. 198, 8 U. S. C. § 1225 (a). The subsection reads as follows:

"... The Attorney General and any immigration officer, including special inquiry officers, shall have power to require by subpena the attendance and testimony of witnesses before immigration officers and special inquiry officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is

migration officers such subpoena power. That section provides that " . . . any immigration officer . . . shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers . . . ." It also makes this power applicable to the obtaining of testimony "concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service . . ." Certainly, the proceedings "In re Minker" was such a matter. The doubtful question is whether Abraham Minker, in his relation to "In re Minker" is a "witness" within the meaning of Section 235(a).

In our ordinary use and understanding of language, witnesses and parties are different categories of participants in an administrative or judicial inquiry. Yet, those so interested in a proceeding as to be parties do at times give evidence as witnesses. Therefore, it may be unclear on the face of a legislative enactment concerning witnesses whether parties are included. This ambiguity has appeared and has proved troublesome in cases arising under

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[2] [CONTINUED]
material and relevant to the enforcement of this chapter and the administration of the Service, and to that end may invoke the aid of any court of the United States. Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer or special inquiry officer may, in the event of neglect or refusal to respond to a subpena issued under this subsection or refusal to testify before an immigration officer or special inquiry officer, issue an order requiring such persons to appear before an immigration officer or special inquiry officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof."

statutes which authorize the taking of depositions of "witnesses". It has frequently been held that parties and other interested persons are not covered by such statutes. *In re Denning*, 1948, 44 Del. 470, 61 A.2d 657; *Hamilton Co. v. Goring*, 1940, 65 R.I. 459, 16 A.2d 334; *Hubbard v. Haynes*, 1949, 189 Tenn. 335, 225 S.W.2d 252. We cite these cases principally for their teaching that "witness" is likely to be an ambiguous word, the meaning of which "is to be determined in each case by the attendant circumstances and context, and that there is no safe general rule that can be applied universally". See *Hubbard v. Haynes*, *supra*, at 338, 225 S.W.2d at 253. Approaching this case that way we find three considerations which lead us to the conclusion that "witnesses" as used in Section 235(a) should not be construed to include such a party as appellant.

In 1952 Congress rewrote the entire body of our statutory immigration and nationality laws. Immigration and Nationality Act of 1952, 66 Stat. 163, 8 U.S.C., 1952 ed., ch. 12. The provision we now are construing is new language in the 1952 Act. The section in which it appears is only one of several scattered throughout the Act in which some provision is made concerning witnesses. Therefore, it is significant that in several such sections where Congress wished to make a provision as to witnesses applicable to parties in interest, it said so. In prescribing naturalization procedure, Congress granted the subpoena power in these terms:

> "The Attorney General shall designate employees of the Service to conduct preliminary examinations upon petitions for naturalization . . . . For such purposes any such employee . . . is authorized . . . to require by subpoena the attendance and testimony of wit-

nesses, including petitioner. . . ." 8 U.S.C., 1952 ed. § 335(b).

Similar precision appears in the regulation of deportation procedure:

> "A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses. . . ." 8 U.S.C., 1952 ed., § 242(b).

Almost identical language appears in connection with the exclusion of aliens:

> "A special inquiry officer shall conduct proceedings under this section, administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses." 8 U.S.C., 1952 ed., § 236. (a).

Again, it is provided:

> "The Attorney General shall have the right to appear before any court in any naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of the petition, concerning any matter touching or in any way affecting the petitioner's right to admission to citizenship, and shall have the right to call witnesses, including the petitioner, . . ." 8 U.S.C., 1952 ed., § 336 (d).

In these circumstances the failure to make any equivalent amplification of the witness category in Section 235(a) is some indication that none was intended.

The second consideration is predicated on the fact that in Section 340 of the new immigration statute, Congress

has been careful to outline a judicial procedure which must be followed to accomplish denaturalization. 8 U.S.C., 1952 ed., §1451. Specific provision is made for an adversary proceeding to be instituted by a United States Attorney in an appropriate court. Grounds for denaturalization must be stated in a formal charge and this document must be served upon the defendant, who shall have 60 days in which to answer. A trial follows. Congress must have believed that the administration of justice in these serious cases would be facilitated by safeguards inherent in such procedure. But as one district judge has pointed out in a case indistinguishable from ours, "If the subpoenas here were allowed to stand, the judicial procedure for the revocation of naturalization certificates would be pre-empted by administrative action, and the provisions for personal notice, sixty-day time period to answer in section 340(b) of the Act would be empty words." *Application of Barnes*, N.D. N.Y. 1953, 116 F. Supp. 464, 469. Accord, *In re Oddo*, S.D. N.Y. 1953, 117 F. Supp. 323. Of course Congress may have intended to minimize the safeguards afforded by Section 340 by compelling the citizen to be a witness against himself in an administrative pretrail. But we think such intention sufficiently unlikely to make a court reluctant to find it by an unnecessarily broad interpretation of the subpoena power conferred by Section 235(a).

Finally, we think the character of denaturalization is such that in choosing between reasonable alternative constructions of statutory language, a court should incline toward the construction favorable to the person whose status is put in jeopardy. The strict construction of criminal statutes is an accepted policy of our jurisprudence designed to protect those who live under our law from possible injus-

tice. Technically, we are not administering the criminal law in this case. But we are concerned with the administration of a sanction which in effect is gravely penal. A fine or imprisonment is the normal criminal penalty. But loss of citizenship is a far graver penalty than most fines and many prison sentences. The Supreme Court has recognized this by requiring a strictness of proof in denaturalization cases which approximates that imposed in criminal cases. *Schneiderman v. United States*, 1943, 320 U. S. 118; *Baumgartner v. United States*, 1944, 322 U. S. 665. And a court of appeals has recently held that the rule of strict construction of penal statutes applies to legislation of "punitive impact" very much like denaturalization. *Yaugiaang v. Boyd*, 9 Cir. 1953, 205 F. 2d 553. We think this is sound and salutary doctrine. Its application here is the third factor which leads us to the construction urged by appellant.

We conclude that a citizen confronted with an administrative proceeding which poses a challenge to his right to retain citizenship is not to be regarded as a "witness" within the meaning of Section 353(a) or required under that section to appear and testify against himself. We note that the learned district judge in this case was careful to say that he was not deciding what the appellant might be required to testify but merely that, in response to the subpoena, he must submit himself as a witness. However, we think the statute does not contemplate that he must be a witness at all in an administrative inquiry instituted with a view to depriving him of citizeship. That much we decide, but no more. We neither consider nor intimate any opinion upon any of the countless other situations in which immigration officers may undertake to require by sub-

poena the appearance and testimony of interested persons in administrative inquiries. E.g., the problem presented, under a statute now repealed, in *Loufakis v. United States*, 3 Cir. 1936, 81 F.2d 956.

The judgment will be reversed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

Appendix C.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

In the Matter
of
Application of Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service, for process to enforce subpoena as to SALVATORE FALCONE
Civil No. 1494

In the Matter
of
Application of Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service, for process to enforce subpoena as to JOSEPH FALCONE
Civil No. 1495

Appearances:

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HERMAN I. BRANSE, Esq.
Immigration & Naturalization Service
On the Brief

Before: HON. J. T. FOLEY—D. J.

MEMORANDUM

These applications present a novel and important problem concerning administrative and investigative functions under the provisions of the Immigration and Nationality Act of 1952, 66 Stat. 163, 8 USCA 1101. The two separate applications are similar enough in factual background, nature and purpose to be discussed as one.

Joseph and Salvatore Falcone are naturalized citizens of the United States. Joseph Falcone assumed such status by an order of the Supreme Court of the State of New York, Oneida County, on February 18, 1925, and Salvatore Falcone was duly admitted to citizenship by order of the same court, dated July 21, 1925. The Falcones came into this country on December 8, 1907, with their parents, who are now deceased, and at the time of entry Joseph was four years of age and Salvatore was sixteen.

A short time previous to the issuance of the subpenas here in question, each respondent received letters from immigration officials requesting that they appear at certain times and places for interview. The details of such interviews are not important except to note that Salvatore was more cooperative in the interview procedure than Joseph. He was asked to explain the reason for the use of the name Projetto by his parents when they entered the country and he answered he had no explanation because his father and mother were dead and he had always

used and was known by the name Falcone. Joseph would not answer any questions when informed by the immigration officer that the reason for the interview would not be stated.

The result of this attitude on the part of the Falcones was the service upon them of separate subpenas, one signed by an officer-in-charge and the other by an acting officer-in-charge of the Immigration and Naturalization Service. Each subpena comanded them to appear on certain dates at the Federal Building in Syracuse, New York, to give testimony and make a statement before an officer of the service at the designated time and place, and further commanded each to produce and bring with them evidence of birth and original entry into the United States and naturalization certificate. Each subpoena was entitled only "In re Salvatore Falcone" and "In re Joseph Falcone;" each subpena specifically stated that it was pursuant to the provisions of section 235 (a) of the Immigration and Nationality Act. The respondents appeared pursuant to the subpenas and both refused to testify under oath, claiming that the subpenas were invalidly issued as against them because they were naturalized citizens and not aliens. Each produced for inspection their birth certificates and certificate of naturalization. Upon the return of the order to show cause, the respondents appeared specially, challenging the power to issue subpenas as against them under the terms of section 235 (a) of the Act. At the hearing upon such return, the official records of the Oneida County Clerk were subpenaed into court by the respondents and disclosed that the certificate of arrival or original entry demanded in each subpena are matters of official record as part of the naturalization

proceedings and available to the immigration service, although not open, as I understand it, to public inspection.

The first contention of the immigration service in these applications is that the subpena power used against these naturalized citizens is authorized and delegated by the Congress in this particular part of the terms of 235 (a) of the Act (8 USCA 1225 (a)):

> "The Attorney General and any immigration officer, including special inquiry officers shall have power to require by subpena the attendance and testimony of witnesses before immigration officers and special inquiry officers and the production of books, papers and documents relating to the privilege of any person to enter, reenter, reside in, or pass through, the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service to that end may invoke the aid of any court of the United States."

The subsection concludes with the conferring of jurisdiction upon the district court to order compliance with such subpena.[1]

The second contention in behalf of the application is

[1] "Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer or special inquiry officer may, in the event of neglect or refusal to respond to a subpena issued under this subsection or refusal to testify before an immigration officer or special inquiry officer, issue an order requiring such person to appear before an immigration officer or special inquiry officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof."

that despite the express confinement of the subpena as "pursuant to the provisions of section 235 (a) of the Act," the power to issue subpenas here is implicitly authorized and granted by the terms of 287 (b) of the Act (8 USCA 1357 (b)) relating to powers of immigration officers and employees.[2]

Further, inasmuch as it is now frankly stated that the legality of the naturalization of the Falcones is under investigation, the subpena power is necessary in the investigation and report as to the institution of revocation proceedings in accordance with the regulations promulgated by the attorney general in the administration and enforcement of the Act in that respect.[3]

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[2] "Sec. 287 (b) Any officer or employee of the Service designated by the Attorney General, whether individually or as one of a class, shall have power and authority to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this Act and the administration of the Service; and any person to whom such oath has been administered, under the provisions of this Act, who shall knowingly or willfully give false evidence or swear to any false statement concerning any matter referred to in this subsection shall be guilty of perjury and shall be punished as provided by section 1621, title 18, United States Code."

[3] Sec. 340.1 Investigation and report. Whenever it appears that any grant of naturalization may have been procured by concealment of a material fact or by willful misrepresentation, the facts shall be reported to the district director having jurisdiction over the naturalized person's last known place of residence. If the district director is satisfied that a prima facie showing has been made that grounds for revocation exist, he shall cause an investigation to be made and report the facts in writing to the Com-

These contentions create a question of statutory construction. There is no judicial authority to my knowledge directly in point and the analysis of the intent of the Congress is made difficult by the immensity of the Act itself. The importance to the administration and enforcement of the Act is evident because it would ease the burden of investigations in such situations as here, but such reason of expediency cannot prevail if the subpena power exercised is in excess of the statutory grant. The authority of Congress to delegate the subpena power to administrative agencies is clearly established, even to the extent that it may delegate effective power to investigate violations of its own laws. However, the subpena power must remain within the bounds of the legislative grant, not overreach the authority granted by Congress, and investigatory matters should be conferred in express and explicit terms for that purpose. Harriman v. ICC, 211 U. S. 407; Oklahoma Press Publishing Co. v. Walling, 327 U. S. 186, 201, 217; National Labor Board v. Anchor Rome Mills, 107 F (2d) 447, 449. In my own judgment, subpenas should not issue upon ill or miss legal grounds.

In support of the first contention outlined, the government emphasizes the changes in section 235 (a) of the Act from the previous provision governing such situations as contained in section 16 of the Immigration Act of 1917

[CONTINUED]

missioner with a recommendation as to whether revocation proceedings should be instituted. If it appears that naturalization was procured in violation of section 1425 of Title 18 of the United States Code, the facts in regard thereto may be presented by the district director to the appropriate United States Attorney for a possible criminal prosecution."

(8 USCA 152).* The word "alien" in the old statute was changed to "person" and a broad clause in relation to the power to subpena was added, "or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service." It was judicially settled under the old provision (8 USCA 152) that the subpena power could be exercised against aliens in either deportation or exclusion proceedings. Loufekis v. U. S. 84 F (2d) 968; Graham v. U. S., 99 F (2d) 746, reversing on other grounds U. S. vs. Parson, 22 F. Supp. 149; In re Yaris, 109 F. Supp. 921, 922. Now the government says in its brief that this change and the addition in terminology in section 235 (a) are most significant and evidence a congressional intent to enlarge the subpena power to enable immigration officers to question every person, alien or citizen, in connection with the investigation of any matter under any section of the Immigration and Nationality Act. However, it is only necessary for me to decide whether these naturalized citizens under investigation as the target for possible revocation proceedings, and ultimately possible deportation proceedings, are subject to subpena under this portion of the Act. I do not think so for several reasons.

Section 235 in the body of the Act is entitled "Inspection by Immigration officers." (66 Stat. 198). In the Title of Contents it is listed under Chapter 4, "Provisions

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* * * * Any district director of immigration and naturalization designated by the Commissioner or any inspector in charge shall also have power to require by subpena the attendance and testimony of witnesses before said inspectors and the production of books, papers, and documents touching the right of any alien to enter, reenter, reside in, or pass through the United States * * * *

relating to Entry and Exclusion" (66 Stat. 163). In the analysis of the bill, contained in House Report No. 1365 (U. S. Code Service, 1952, pages 1709-1710), the discussion of section 235 is under the heading "Entry, Exclusion and Deportation of Aliens" (Ch. 4 and Sec. 287). Such analysis, although it pertains to other provisions of subsection 235 (a), outside that portion relied upon here by the government, gives some enlightenment as to the congressional intent of section 235:

> "* * * In conjunction with their inspection of aliens, the bill authorizes the immigration officers to board and search vessels, aircraft, railway cars or any other conveyance or vehicle in which they believe aliens are being brought into the United States. The immigration officers are empowered to administer oaths, take evidence and make a record, if necessary, concerning the enforcement of the bill with reference to the privilege of any alien to enter, pass through or reside in the United States. Any person coming to the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain, whether or not he intends to remain permanently, whether if an alien, he intends to become a citizen, and such other information as will aid the immigration officers in determining whether the person is a national of the United States or an alien, and, if the latter, whether he is subject to exclusion under any of the provisions of the bill. It is not intended by this provision to subject the ultimate question of the admissibility or harassment of citizens returning to the United States, but it is to be used by the immigration officers whenever there is reason to believe that a citizen is violating or about to violate the law and is about to

becomes expatriated. Immigration officers are also granted the power to subpoena the attendance and testimony of witnesses, and the production of books, papers, and documents in aid of the enforcement of the provisions of the bill. An alien who does not appear, to the examining immigration officer, to be admissible, clearly and beyond a reasonable doubt, shall be detained for further inquiry by a special inquiry officer. * * *"

"* * * Section 287 of chapter 8 further specifies powers of immigration officers and employees of the Immigration and Naturalization Service. * * *"

As I read this background and the section as a whole, I cannot reasonably discern an intent that would allow subpoena power over naturalized citizens for the purpose of investigation to ascertain good cause for the institution of revocation proceedings. The Limitation of this administrative subpoena power, in my judgment, must be kept within the confines of the provisions as stated and restricted to such purpose, and there is not the slightest indication in the legislative background nor the terms of the provisions that it may be used for the investigative purpose here sought against a naturalized citizen. One judicial discussion of section 235(a), together with other related sections, indicates generally that issues of law under such section concerns only aliens and not citizens of the United States by birth or naturalization. Int. Longshoremen's Union v. Boyd, 111 F. Supp. 802. In construing these provisions I have also kept in mind that it necessarily would have punitive impact upon an important right now held by the respondents, the revocation of which might ultimately result in deportation. Such punitive impact of

a statute calls for strict construction of the terms. Mangaoang v. Boyd, 205 F.(2d) 553, cert. denied November 9, 1953, 22 L.W. 3121.

The most important reason for my conclusion as to the invalidity of the subpoenas comes from a reading of the Act as a whole, which the government recommends in support of its contention. A specific, detailed and exact judicial procedure is set forth in section 340 for the revocation of naturalization certificates when they were procured by concealment of a material fact or by willful misrepresentation. The pertinent part of section 340(a) is set forth below.[5] The most striking part of this procedure, which is old in the law, is contained in section 340(b).[6]

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[5] "Sec. 340 (a). It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefore, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively. * * *" (8 USCA 1451).

[6] "Sec. 340 (b). The party to whom was granted the naturalization alleged to have been procured by concealment of a material fact or by willful misrepresentation shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice, unless waived by such party, in which to make answer to the petition of

In discussing the judicial procedure as outlined in section 15 of the Act of 1906, similar to the one we have today, Judge VanDevanter stated: "* * * the section makes no discrimination between the rights of naturalized and native citizens, and does not in anywise affect or disturb rights acquired through lawful naturalization, but only provides for the orderly cancellation, after full notice and hearing, of certificates of naturalization which have been procured fraudulently or illegally. It does not make any act fraudulent or illegal that was honest and legal when done, imposes no penalties, and at most provides for the annulment, by appropriate judicial proceedings, of merely colorable letters of citizenship, to which their possessors were never lawfully entitled." (Luria v. U. S. (1913) 231 U. S. 9, 24). A citizen is entitled to have his status determined by a judicial tribunal and have the security of judicial over administrative action. Bilokumsky v. Tod, 263 U. S. 149, 152; Ng Fung Ho v. White, 259 U. S. 276.

If the subpoenas here were allowed to stand, the judicial procedure for the revocation of naturalization certificates would be pre-empted by administrative action, and the provisions for personal notice, sixty-day time period to answer in section 340 (b) of the Act would be empty words. The method of challenge to fraudulent naturalization is

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[CONTINUED]
the United States; and if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given either by personal service upon him or by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought."

plainly prescribed and any examination of the party against whom it is directed should be in accord with the judicial process. The investigative power of the Service is an important one, and I carefully avoid any undue limitation or hampering of such power. I agree that naturalization is a privilege rather than a right and an alien who seeks this privilege must conform strictly with the requirements established by statute. U. S. v. Ness, 245 U. S. 319.

It must be equally kept in mind that under our constitution a naturalized citizen stands on equal footings with the native citizen in all respects, save that of eligibility to the Presidency. Osborn v. Bank of U. S., 22 U.S. (9 Wheat.) 739; Boyd v. Thayer, 143 U.S. 135; Luria v. U. S., 231 U.S. 9.

My outlined reasoning in relation to section 340 of the Act is sufficient answer to the contentions that the subpoena power should in this particular situation be implied as concomitant to the provisions of section 278(b) of the Act and 8 CFR 340.11. The issuance and form of subpoenas in proceedings pending before immigration officials are set forth in 8 CFR 287.4 (a) (b).

Each application to enforce the subpoena involved is denied and dismissed.

Dated: Albany, New York, November 20, 1953.

Appendix D.

In re ODDO
United States District Court,
S. D. New York.
Dec. 30, 1953.

WEINFELD, District Judge.

"Respondent, a naturalized citizen, moves to vacate an ex parte order issued by the United States District Court pursuant to Sec. 235(a) of the Immigration and Naturalization Act, 8 U.S.C.A. Sec. 1225(a), directing him to appear and give testimony with respect to the legality of his naturalization "and other pertinent matters." The order was obtained on the basis of an affidavit of an attorney in the office of the District Counsel, Immigration and Naturalization Service, Department of Justice, who alleged that the respondent was the subject of an investigation concerning the legality of his naturalization.

"The respondent's contention is that the subpoena power granted to the Attorney General and the immigration officers under Sec. 235(a) of the Act is limited to cases involving the entry, exclusion and deportation of aliens,[1] and does not include the right to subpoena a naturalized citizen where the ultimate objective is revocation of his citizenship.

"Two recent District Court decisions dealing with the precise issue here presented have reached contrary results. Application of Barnes (In the Matter of Falcone), D.C.N.D.N.Y., 116 F. Supp. 464; In the Matter of Minker, D.C.E.D.

[1] Cf Loufakis v. United States, 3 Cir., 81 F. 2d 966; In re Yaris, D. C. S. D. N. Y., 109 F. Supp. 931.

Pa., 118 F. Supp. 264.) The question is close; but independently I arrived at the conclusion—the one reached by Judge Foley in the Falcone case—that under Sec. 235(a) of the Act the Immigration Service officials have no power to issue a subpoena against a citizen preliminary to the commencement of the denaturalization proceedings. In so holding, I fully agree with the reasoning of Judge Foley.

"I add but two points. While Sec. 235(a) in broad terms states that the Attorney General and "any immigration officers" have power to subpoena witnesses "concerning any matter which is material and relevant to the enforcement of this Act * * *," the section appears in Chapter 4 of Title II of the Act, entitled "Provisions Relating to Entry and Exclusion". On the other hand, Sec. 340,[2] which governs revocation of naturalization procedure, is contained in Title III of the Act. This title is headed "Nationality and Naturalization". Section 335(b) of Title III, 8 U.S.C.A. Sec. 1446(b), grant "employees of the [Immigration and Naturalization] Service" who are designated by the Attorney General the power to subpoena witnesses in pre-naturalization procedures. By definition "immigration officer" means any "employee or class of employees of the Service".[3] Thus, if the subpoena power in Title II, Sec. 235(a), were intended to extend to and to apply to all sections of the Act, as the government contends, then Sec. 335(b) of Title III is duplicitous and serves no function. "The Act is not to be construed so as to make a provision meaningless."[4]

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[2] 8 U.S.C.A. Sec. 1451.

[3] Sec. 101 (a) (18) 8 U.S.C.A. Sec. 1101 (a) (18).

[4] Platt v. Union Pacific R. Co., 99 U.S. 48, 49, 25 L. Ed. 424;

"One further point. Suits to revoke citizenship are to be instituted, according to the express mandate of Sec. 349 of the Act, by the United States Attorney for the district wherein the naturalized citizen resides. Revocation suits are actions in equity.[5] As a litigant in such suits, the government is bound by the same rules which apply to all other litigants, except as the law may otherwise expressly provide. If Congress had intended to grant the government as an adversary greater rights than those extended to other civil litigants, purpose would have been clearly indicated in the section dealing with denaturalization proceedings, particularly so, since invariably it is preliminary to a deportation proceeding.

"Nowhere in the statute, at least my attention has not been called to any such provision, is power granted to the Immigration and Naturalization Service to participate in the function imposed upon the United States Attorney to

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[1] [Continued]
Hurley v. United States, 4 Cir., 192 F. 2d 297, 300;
Lawrence Warehouse Co. v. Defense Suppliers Corp., 9 Cir., 168 F. 2d 199, 202, vacated on other grounds, 336 U. S. 631, 69 S. Ct. 762, 93 L. Ed. 931;
United States ex rel. Lee Ah Youw v. Shaughnessy, D. C. S. N. Y., 102 F. Supp. 799;
Parcell v. United States, D. C. D. W. Va., 104 F. Supp. 110, 116.

[5] Luria v. United States, 231 U. S. 9, 27-28, 34 S. Ct. 10, 58 L. Ed. 101;
United States v. Kusche, D. C. S. D. Cal., 56 F. Supp. 201, 225;
cf. Schneiderman v. United States, 320 U. S. 118, 160, 63 S. Ct. 1333, 87 L. Ed. 1796;
Baumgartner v. United States, 322 U. S. 665, 64 S. Ct. 1240, 88 L. Ed. 1525.

prosecute revocation suits. It is true that a regulation[6] has been promulgated by the Attorney General authorizing the Immigration and Naturalization Service to conduct investigations on behalf of the United States Attorney, but this regulation may not be used to extend a subpoena power to the Service which the statute itself does not grant to the United States Attorney."

"Consequently, for these and the persuasive reasons adverted to by Judge Foley, I think that the scope of Section 335(a) is to be confined to the title of the Act in which it appears. Since no subpoena power is granted to the Attorney General or Immigration Service officials in connection with revocation of naturalization proceedings in Title III, respondent's motion to vacate the ex parte order is granted.

"This disposition makes it necessary to consider the other objections urged by the respondent.

"Settle order on notice."

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[6] 8 CFR Sec. 340.11.

Appendix E-1.

(JUDGMENT)

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT.

At a Stated Term of the United States Court of Appeals in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 10th day of January one thousand nine hundred and fifty-five.

Present: HON. HARRIE B. CHASE,
HON. HAROLD R. MEDINA,
HON. CARROLL C. HINCKS,
Circuit Judges.

In the Matter
of
the application of Harold E. Barnes, Officer in charge of Immigration & Naturalization Service for Process to enforce Subpoena as to Salvatore Falcone.

(20)

Appeal from the United States District Court for the Northern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Northern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed in accordance with the opinion of this Court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

A. DANIEL FUSARO
Clerk.

Filed Jan. 10, 1955.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the order of said District Court be and it hereby is reversed in accordance with the opinion of this Court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

A. DANIEL FUSARO
Clerk.

Filed Jan. 10, 1955.

Appendix E-2.

(JUDGMENT)

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 10th day of January one thousand nine hundred and fifty-five.

Present: HON. HARRIE B. CHASE,
HON. HAROLD R. MEDINA,
HON. CARROLL C. HINCKS,
Circuit Judges.

In the Matter
of
the application of Harold E. Barnes, Officer in charge of Immigration & Naturalization Service for Process to enforce Subpoena as to Joseph Falcone.
(21)

Appeal from the United States District Court for the Northern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Northern District of New York, and was argued by counsel.

Appendix F.

STATUTES INVOLVED

Section 235 (a) of the Immigration and Nationality Act of 1952 (8 U. S. C., Section 1225) appears under Title II of said act, entitled "Immigration" under Chapter 4, subtitled "Provisions Relating to Entry and Exclusion" and states:

"Inspection By Immigration Officers

"Sec. 235. (a) The inspection, other than the physical and mental examination, of aliens (including alien crewmen) seeking admission or readmission to, or the privilege of passing through the United States, shall be conducted by immigration officers, except as otherwise provided in regard to special inquiry officers. All aliens arriving at ports of the United States shall be examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe. Immigration officers are hereby authorized and empowered to board and search any vessel, aircraft, railway car, or other conveyance, or vehicle in which they believe aliens are being brought into the United States. The Attorney General and any immigration officer, including special inquiry officers, shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, pass through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and, where such action may be necessary, to make a written record of such evidence. Any

person coming into the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain in the United States, whether or not he intends to remain in the United States permanently and, if an alien, whether he intends to become a citizen thereof, and such other items of information as will aid the immigration officer in determining whether he is a national of the United States or an alien and, if the latter, whether he belongs to any of the excluded classes enumerated in section 212. The Attorney General and any immigration officer, including special inquiry officers, shall have power to require by subpena the attendance and testimony of witnesses before immigration officers and special inquiry officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and to that end may invoke the aid of any court of the United States. Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer or special inquiry officer may, in the event of neglect or refusal to respond to a subpena issued under this subsection or refusal to testify before an immigration officer or special inquiry officer, issue an order requiring such persons to appear before an immigration officer or special inquiry officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the

court may be punished by the court as a contempt thereof."

Section 287 (b) of the Act, (8 U. S. C. Section 1357 (b)), appears under Title II, entitled "Immigration", under Chapter 9—subtitled "Miscellaneous" and states:

"POWERS OF IMMIGRATION OFFICERS AND EMPLOYEES

"SEC. 287. (b) Any officer or employee of the service designated by the Attorney General, whether individually or as one of a class, shall have power and authority to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this Act and the administration of the Service; and any person to whom such oath has been administered under the provisions of this Act, who shall knowingly or willfully give false evidence or swear to any false statement concerning any matter referred to in this subsection shall be guilty of perjury and shall be punished as provided by section 1621, title 18, United States Code."

Section 335 (a) and (b) of the Act, (8 U. S. C. Section 1446), appears under Title III, entitled "Nationality and Naturalization" under Chapter 2, subtitled "Nationality through Naturalization" and states:

"INVESTIGATION OF PETITIONERS; PRELIMINARY EXAMINATIONS ON PETITIONS

"SEC. 335. (a) At any time prior to the holding of the final hearing on a petition for naturalization provided for by section 336 (a), an employee of the Service

vice, or of the United States designated by the Attorney General, shall conduct a personal investigation of the person petitioning for naturalization in the vicinity or vicinities in which such person has been employed or has engaged in business or work for at least five years immediately preceding the filing of his petition for naturalization. The Attorney General may, in his discretion, waive a personal investigation in an individual case or in such cases or classes as may be designated by him.

"Conduct of Examinations

"(b) The Attorney General shall designate employees of the Service to conduct preliminary examinations upon petitions for naturalization to any naturalization court and to make recommendations thereon to such court. For such purposes any such employee so designated is hereby authorized to take testimony concerning any matter touching or in any way affecting the admissibility of any petitioner for naturalization, to administer oaths, including the oath of the petitioner for naturalization and the oaths of petitioner's witnesses to the petition for naturalization, and to require by subpena the attendance and testimony of witnesses, including petitioner, before such employee so designated and the production of relevant books, papers, and documents, and to that end may invoke the aid of any court exercising naturalization jurisdiction as specified in section 310 of this title; and any such court may, in the event of neglect or refusal to respond to a subpoena issued by any such employee so designated or refusal to testify before such employee so designated issue an order requiring such person to appear before such employee

so designated, produce relevant books, papers, and documents if demanded, and testify; and any failure to obey such order of the court may be punished by the court as a contempt thereof. The record of the preliminary examination authorized by this subsection shall be admissible as evidence in any final hearing conducted by a naturalization court designated in section 310 of this title."

Section 340 of the Act (8 U. S. C., Section 1451), appears under Title III, entitled "Nationality and Naturalization" under Chapter 2, subtitled "Nationality and Naturalization" and states:

"REVOCATION OF NATURALIZATION

"SEC. 340 (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: Provided; That refusal on the part of a naturalized citizen within a period of ten years following his naturalization to testify as a witness in any

proceeding before a congressional committee concerning his subversive activities, in a case where such person has been convicted of contempt for such refusal, shall be held to constitute a ground for revocation of such person's naturalization under this subsection as having been procured by concealment of a material fact or by willful misrepresentation. If the naturalized citizen does not reside in any judicial district in the United States at the time of bringing such suit, the proceedings may be instituted in the United States District Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence."

"Concealment of Material Fact"

"(b) The party to whom was granted the naturalization alleged to have been procured by concealment of a material fact or by willful misrepresentation shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice, unless waived by such party, in which to make answer to the petition of the United States; and if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given either by personal service upon him or by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought."

Title 8—Code of Federal Regulation

Part 287 appears under "Rules and Regulations", Subchapter B entitled "Immigration Regulations" and states:

"Part 287—Field Officers' Powers and Duties

"Sec. 287.1 Definitions.

Sec. 287.2 Criminal violations; investigation and action.

"Sec. 287.3 Disposition of cases of aliens arrested without warrant.

"Sec. 287.4 Subpena—(a) Who may issue. Except as provided in Sec. 335.11 of this chapter, subpoena requiring the attendance of witnesses or the production of documentary evidence, or both, may be issued upon his own volition by a district director, officer in charge, or special inquiry officer in any proceeding pending before him, or upon application of an officer of the Service, or upon written application of the alien or other party affected. If an alien or other party affected by a proceeding before the Service requests that a witness be subpoenaed to testify or to produce books, papers or documents in such proceeding before the Service, he shall be required as a condition precedent to the issuance of the subpoena to state in writing that he expects to prove by such witness or the books, papers, or documents and to show affirmatively that the proposed evidence is relevant and material and that he has made diligent efforts without success to produce the same. Upon determining that a witness whose evidence is desired either by the Service officer, or the alien or other party affected will not appear and testify or produce documentary evidence unless commanded to do so and that the testimony and evidence of such witness is essential, the district director, officer in charge, or a special inquiry officer in any proceeding pending before him, shall issue a subpoena. If the witness is at a distance of

more than 100 miles from the place of hearing, the subpoena shall provide for the witness' appearance at the field office nearest to him to respond to oral or written interrogatories, unless the Service indicates that there is no objection to bringing the witness the distance required to enable him to testify in person at the hearing.

"(b) Form.

"(c) Service.

"(d) Invoking aid of court."

Part 335 appears under Subchapter C entitled "Nationality Regulations", subtitled "Preliminary Examinations On Petitions For Naturalization", and states:

"Sec. 335.11 Preliminary examination pursuant to section 335 (b) of the Immigration and Nationality Act.—(a) *When held.* Preliminary examinations shall be open to the public, and shall, where practicable, be held immediately after the petition for naturalization is filed with the clerk of the court unless, in the opinion of the district director or officer in charge, the interests of good administration would be better served by holding such examinations prior to the filing of the petition in the office of the clerk of the court, but in no event shall such examinations be held before the petition has been properly executed by the petitioner and his verifying witnesses.

"(b) *Conduct of examination.* Preliminary examinations shall be held before an employee of the Service, designated by the district director to conduct such proceedings and to make findings and recommendations thereon to the naturalization court, who shall be known as the "designated examiner." The peti-

tioner and his witnesses and the witnesses produced on behalf of the Government shall be present. The designated examiner shall, prior to the commencement of the examination, make known to the petitioner his official capacity and that of any other officer of the Service who may participate in the proceeding. The designated examiner shall have before him the entire record of the preliminary interrogation, including the petitioner's application to file a petition for naturalization (Form N400) and any other evidence or data that may be relevant or material to the inquiry. All testimony taken at the examination shall be under oath or affirmation administered by the designated examiner. The designated examiner may interrogate the petitioner and witnesses produced in behalf of the petitioner or the Government, and present evidence touching upon the petitioner's admissibility to citizenship. He shall regulate the course of the examination, rule upon applications for the issuance of subpoenas and issue such subpoenas in proper cases, grant or deny continuances, and rule on all objections to the introduction of evidence, which rulings shall be entered on the record. Evidence held by the designated examiner to be inadmissible shall nevertheless be received into the record subject to the ruling of the court. The petitioner and the Government shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. If the petitioner is not represented by an attorney or representative, the designated examiner shall assist the petitioner in the introduction of all evidence available in his behalf. All documen-

tary or written evidence shall be properly identified and introduced into the record as exhibits by number, unless read into the record."

Part 340 appears under Subchapter C entitled "Nationality Regulations", subtitled "Revocation of Naturalization", and states:

"Sec. 340.11 Investigation and report. Whenever it appears that any grant of naturalization may have been procured by concealment of a material fact or by wilful misrepresentation, the facts shall be reported to the district director having jurisdiction over the naturalized person's last known place of residence. If the district director is satisfied that a prima facie showing has been made that grounds for revocation exist, he shall cause an investigation to be made and report the facts in writing to the Commissioner with a recommendation as to whether revocation proceedings should be instituted. If it appears that naturalization was procured in violation of section 1425 of Title 18 of the United States Code, the facts in regard thereto may be presented by the district director to the appropriate United States Attorney for possible criminal prosecution."

Appendix G.

UNITED STATES CODE
Congressional and Administrative News—Vol. 2
82nd Congress—Second Session—1952
House Report No. 1365—pgs. 1709-1710

IMMIGRATION AND NATIONALITY ACT
TITLE II — IMMIGRATION

"4. Entry, exclusion, and Deportation of Aliens (Ch. 4 and Sec. 287)

"A. Inspection

"The provision relating to the inspection of arriving aliens, contained in chapter 4 of the bill, follow the general pattern of the present law. Every alien arriving at a port of entry must be examined by an immigration officer before he may enter, and such officers are empowered to detain the aliens on board the arriving vessel or at the airport of arrival for observation if suspected of being afflicted with mental or physical defects and may order the temporary removal of the alien for examination and inspection. Medical examinations are to be made by at least one qualified medical officer of the United States Public Health Service or by a qualified civil surgeon.

"In conjunction with their inspection of aliens, the bill authorizes the immigration officers to board and search vessels, aircraft, railway cars, or any other conveyance or vehicle in which they believe aliens are being brought into the United States. The immigration officers are empowered to administer oaths, take evidence and make a record, if necessary, concerning the enforcement of the bill with reference to the privilege of any alien to enter, pass through

or re-side in the United States. Any person coming to the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain, whether or not he intends to remain permanently, whether, if an alien, he intends to become a citizen, and such other information as will aid the immigration officers in determining whether the person is a national of the United States or an alien, and, if the latter, whether he is subject to exclusion under any of the provisions of the bill. It is not intended by this provision to sanction the indiscriminate questioning or harrassment of citizens returning to the United States, but it is to be used by the immigration officers whenever there is reason to believe that a citizen is violating or about to violate the law and is about to become expatriated. Immigration officers are also granted the power to subpoena the attendance and testimony of witnesses, and the production of books, papers, and documents in aid of the enforcement of the provisions of the bill. An alien who does not appear, to the examining officer, to be admissible, clearly and beyond a reasonable doubt, shall be detained for further inquiry by a special inquiry officer.

"It is specifically provided in section 235(b) that an inquiry before a special inquiry officer is not required in the case of an alien crewman or a stowaway. Furthermore, in section 235(c), it is provided that if an examination before a special inquiry officer is not required in the case of an immigration officer or a special inquiry officer an alien appears to be excludable under paragraph (27); (28), or (29) section 212(a) as an alien whose entry would endanger the public safety or security of the United States or as an alien who is a member of one of the subversive classes

of excludables, no further inquiry by a special officer shall be conducted until the case is reported to the Attorney General together with any such written statement and accompanying information as the alien or his representative may desire to submit in connection therewith. In the latter type of case, the Attorney General may direct an inquiry or a further inquiry, as the case may be, or if he is satisfied that the alien is excludable on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the interests of the United States, he may, in his discretion, order such alien to be excluded and deported without any inquiry or further inquiry by a special inquiry officer.

"Section 287 of chapter 8 further specifies powers of immigration officers and employees of the Immigration and Naturalization Service. Amendments Nos. 20 and 21 are designed to make a very carefully considered distinction between powers which may be exercised without warrant and such a warrant will be required. * * *"

Appendix H.

UNITED STATES COURT OF APPEALS.
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 8th day of February, one thousand nine hundred and fifty-five.

Present: HON. HARRIE B. CHASE,
HON. HAROLD R. MEDINA,
HON. CARROLL C. HINCKS,
Circuit Judges.

In the Matter
of
The Application of Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service, for process to enforce subpoena as to Salvatore Falcone.

In the Matter
of
The Application of Harold E. Barnes, Officer in Charge of Immigration and Naturalization Service, for process to enforce subpoena as to Joseph Falcone.

A petition for a rehearing having been filed herein by counsel for the appellees,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

/s/ A. DANIEL FUSARO
Clerk

Filed Feb. 8, 1955.